

Food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.310. (This is a GIL).

July 29, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated June 21, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY is a retailer which utilizes a 'superstore' concept. That is, it combines a supermarket, pharmacy and general merchandise (hard and soft goods) under one roof.

COMPANY's goal is to collect the correct amount of retailer's occupation tax on all of its sales.

Additionally, COMPANY wants to have the tax applied in the identical manner to its competitors on identical/similar products.

Occasionally, consumers question the application of the full rate of tax to items that they perceive as eligible for the reduced rate.

Accordingly, COMPANY hereby requests an official ruling as to whether or not the following products are eligible for the reduced rate of tax (please note that the full rate of tax is currently being applied to each of the products listed below):

1. **Non-carbonated flavored water.** Illinois statute 35 ILCS 105/3-10 specifically states that non-carbonated water is not a 'soft drink'.

It also allows drinks with 50% or more of fruit or vegetable juice to be eligible for the reduced rate. By inference, it is presumed that beverages with less than 50% juice are not eligible.

The tax status of beverages that contain non-carbonated water, less than 50% juice, natural and/or artificial flavors(s), and real or artificial sweeteners is not as clear. Should these be

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taxed as non-carbonated water or as a soft drink (with less than 50% juice)?

Enclosed are the following labels to illustrate the issue:

- a. Crystal Light™ Cranberry Breeze;
- b. Crystal Light™ Lemonade;
- c. Mystic® fruit blast;
- d. Kool-Aid® Bursts Blastin' Berry Cherry
- e. POWERADE® Green Squall (a 'sports' drink);
- f. Gatorade® FIERCE™ MELON (a 'sports' drink);

It should be noted that in some instances a different flavor of the same product may contain fruit juice, but generally less than 50%.

2. **Chocolate flavored drinks.** The previously mentioned statute also exempts 'milk and milk products'.

HERSHEY'S® Chocolate Shake and HERSHEY'S® Chocolate Drink both contain lowfat or nonfat milk as a principle ingredient; yoo-hoo® chocolate drink contains dairy whey, a milk by-product, as a principle ingredient. All three have vitamins and minerals as nutrients.

Are one or more of these products eligible for the reduced rate?

Labels for each of these products are enclosed to facilitate your review.

Thank you for your prompt consideration of this request.

I hereby certify that COMPANY, is not under any audit with Illinois nor has the Illinois Department of Revenue notified COMPANY of any impending audit. None of the issues raised are on appeal with Illinois.

The Retailers' Occupation Tax Act imposes a tax upon "persons engaged in the business of selling at retail tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for public commercial exhibition." 35 ILCS 120/2. The state rate is 6.25% plus applicable local taxes for general merchandise and 1% plus applicable local taxes for items that qualify as food, drugs or medical appliances.

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Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding tax on food, medicine and medical appliances under the Retailers' Occupation Tax Act. As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See Section 130.310(b)(1).

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

From the information you provided, it appears that the types of beverages that you list as "non-carbonated flavored water" are soft drinks that should be taxed at the high rate. Further the beverages that you list as "chocolate flavored drinks" that contain milk or milk products are not soft drinks and therefore should be taxed at the low rate.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.